

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 19, 2008

4:36 PM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

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1
2 HEARING re Debtor's Motion for an Order Pursuant to Section 105
3 of the Bankruptcy Code Confirming Status of Citibank Clearing
4 Advances

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6 HEARING re Debtor's Motion to (a) Schedule a Sale Hearing; (b)
7 Establish Sales Procedures; (c) Approve a Breakup Fee; and (d)
8 Approve the Sale of the Purchased Assets and the Assumption and
9 Assignment of Contracts Relating to the Purchased Assets

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25 Transcribed by: Lisa Bar-Leib

1 if people have objections based upon that, they should be
2 somewhat relieved.

3 THE COURT: All right. And I'm sure if there are
4 questions during the break, they'll approach you or your
5 partners.

6 MR. MILLER: Thank you, Your Honor.

7 THE COURT: I think if a half hour is what you think
8 you need --

9 MR. MILLER: Yes.

10 THE COURT: -- why don't we say 5:15 with the
11 understanding that time has proven to be very flexible here in
12 the past this week. And it may turn out that we'll need a
13 little bit more time. But let's make that the holding time and
14 if there's a need for more, somebody should just knock on my
15 chambers door and let me know what's required.

16 MR. MILLER: Thank you, Your Honor.

17 THE COURT: Okay. We're adjourned until 5:15
18 provisionally.

19 (Recess from 4:43 p.m. until 5:41 p.m.)

20 THE COURT: Please be seated. I find myself in the
21 unusual position of being perhaps the only person in the
22 courtroom who doesn't know what everybody else knows because I
23 didn't hear what you told everybody. Do you want to tell me
24 anything?

25 MR. MILLER: Somehow, Your Honor, we knew you were

1 going to ask that question. So --

2 THE COURT: I hate to be that predictable.

3 MR. MILLER: There is a document -- maybe it'd be
4 better, Your Honor, if we do it orally.

5 THE COURT: Fine.

6 MR. MILLER: My partner, Ms. Fife, will do that. And
7 with some assistance from Ms. --

8 THE COURT: Let me just check on something because --
9 and this is purely technical. During the first phase of the
10 hearing, I was told that those people who are listening in
11 spillover courtrooms had a very hard time hearing me. I'm
12 having some difficulty as compared with our last hearing with
13 the amplification coming out of the podium. And I just want to
14 make sure that we're not suffering system overload. Okay.
15 That's on. And let me also make the announcement, whenever
16 anyone speaks for the record, this is always true here, but
17 given the number of people, please identify yourself before
18 speaking.

19 MS. FIFE: Thank you, Your Honor. Lori Fife from
20 Weil Gotshal & Manges on behalf of the debtors. Let me try to
21 summarize the changes that were made to the transaction. In
22 terms of the economic changes, they result largely because of
23 the markets, unfortunately. And from the time that the
24 transaction was actually entered into till now, the markets
25 dropped and the value of the securities dropped as well.

1 So, originally, we were selling assets that had a
2 value of seventy -- approximately seventy billion dollars. And
3 today, Your Honor, we're only selling assets that have a value
4 of 47.4 billion dollars.

5 Barclays is assuming liabilities, however, of 45.5
6 billion dollars in connection with those assets. So that has
7 not changed from the original transaction. There was an upside
8 sharing in the original transaction. There was going to be a
9 true-up twelve months later on and that has been eliminated
10 from this transaction.

11 Barclays is still agreeing to pay the cure amounts on
12 any leases that it assumes or that we assume and assign to it.
13 Barclays is also agreeing to the same employee compensation
14 arrangements. And it is also agreeing to pay the 250 million
15 dollars of goodwill to LBI.

16 With respect to the real estate assets, Your Honor,
17 that was -- we had said at the last hearing, I believe, it was
18 approximately a billion dollars. Since that time, an appraisal
19 has come in and it is below that amount. The contract had a
20 provision which allowed the purchaser really to purchase the
21 building at the appraised amount. So we have some negotiations
22 to go, but I believe that the purchase price will come down by
23 approximately a hundred million dollars.

24 There were two other real estate properties also
25 which we received appraisals for which, similarly, were lower

1 than we had anticipated, unfortunately. So I think,
2 cumulatively, we're expecting that the purchase price will come
3 down by a hundred to maybe 200 million dollars for the real
4 estate.

5 Some other changes that were made to the contracts
6 affect what are called purchase assets and what are excluded
7 assets. There was some confusion as to which subsidiaries, if
8 any, were being sold. And we've clarified in a clarification
9 letter which we're hoping to finalize and actually present to
10 Your Honor whenever it comes down here. But in that letter,
11 we're going to clarify that the only subsidiaries that are
12 being purchased by Barclays are Lehman Brothers Canada Inc.,
13 Lehman Brothers Sudamerica SA and Lehman Brothers Uruguay SA.
14 The latter two subsidiaries that I just referred to relate to a
15 business that is called PIM, or Private Investment Management
16 Business, which is a business that was not part of the original
17 deal but is now being purchased by Barclays.

18 THE COURT: For no additional consideration?

19 MS. FIFE: That's correct, Your Honor.

20 THE COURT: And what's that business worth?

21 MS. FIFE: It's essentially just people, Your Honor.
22 It's the high net worth individual brokerage business. And
23 it's really just the people who are in those offices.

24 THE COURT: And their rolodexes.

25 MS. FIFE: And their rolodexes, exactly. The

1 customer accounts were being transferred anyway.

2 There was a change that was made to the license of
3 the Lehman Brothers' name. It was perpetual. It is now two
4 years but we don't really believe that that's a problem. The
5 IMD business, which is essentially Neuberger Berman and some
6 other related entities, will have a perpetual license to use
7 the name.

8 There was a provision in the old agreement pursuant
9 to which the parties were sharing the residential real estate
10 mortgages. There is no longer that provision. Barclays was
11 required to post collateral, actually this morning, in order to
12 get DTC to open up trading. And that collateral was posted --
13 the residential real estate mortgages was posted to DTC.
14 Pursuant to this transaction, Barclays is taking over and
15 guaranteeing all of those transactions. And they are assuming
16 the risk related to those transactions so that collateral will
17 remain with Barclays.

18 THE COURT: What's the aggregate value of the posted
19 collateral?

20 MS. FIFE: One second, Your Honor.

21 (Pause)

22 MS. FIFE: Your Honor, I'm not -- excuse me? There
23 are 300,000 trades but we're not sure the value of the
24 collateral. Perhaps during the rest of the hearing we can find
25 that amount out for Your Honor.

1 transaction's not consummated then the transactions -- all the
2 trades come back to Lehman, and Lehman is then responsible for
3 them. Excuse me for one second, Your Honor.

4 (Pause)

5 MS. FIFE: I'm being told that if the liabilities are
6 less than the collateral then the excess collateral comes back
7 to Lehman.

8 THE COURT: And if the liabilities are greater?

9 MS. FIFE: We have no further obligation.

10 THE COURT: Okay.

11 MS. FIFE: We also modified the agreement -- would
12 you like the representative from DTC to explain that in more
13 detail, Your Honor?

14 THE COURT: Mr. Hirshon, I'd be happy to hear from
15 you.

16 MR. HIRSHON: Good afternoon, Your Honor. Nice to be
17 before you. Sheldon Hirshon, Proskauer Rose, representing the
18 composite -- the trust clearing corporations. Your Honor, the
19 essence of the transaction is to move all of the accounts
20 seamlessly from Lehman to Barclays. What DTC does is the
21 plumbing of that and handles all of the details in the settling
22 of the trades.

23 THE COURT: Is that how they describe themselves?

24 MR. HIRSHON: That's how I describe them because
25 until Sunday, I didn't understand any of this. But it is what

1 spigots get turned on and off and how the pipeline is filled
2 and then emptied. So each day -- there are several different
3 clearinghouses. And each day the trades are matches and then
4 either a net number goes to Lehman or from Lehman to DTC or any
5 of its clearing companies. There was a depository that holds
6 all of the securities. The residential mortgages that you've
7 heard about that were going to be split fifty/fifty are in the
8 DTC registry. We hold them now. They are there. Originally,
9 the idea for the original transaction was to split those
10 fifty/fifty between Barclays and the estate. But in order to
11 facilitate the settlement of these accounts, the additional
12 fifty percent was needed so that DTC would not be at risk for
13 the settlement. So the --

14 THE COURT: So this modification principally is for
15 the benefit of your client?

16 MR. HIRSHON: Correct. And for the transaction,
17 because without it trading would have stopped. There would be
18 no business to sell because there would have been no -- no
19 trades cleared today. So it was to facilitate the transaction
20 as a friend to the transaction that this was done so that the
21 business continues to operate today. Now, the arrangement is
22 that the whole six billion dollars of residential mortgages
23 will be there and subject to settlement. But the anticipation
24 is that once all these claims settle, the trades that are from
25 Wednesday through Monday settle, there will not be a need for

1 all of that collateral. So what the amendment to the APA says
2 is that the fifty percent will be returned, as long as it's
3 there. If something really terrible happens in the world and
4 the settlements don't work and we have to use that collateral,
5 then there will be nothing to return. But the anticipation is
6 that if the world remains somewhat stable that the fifty
7 percent that was now transferred to Barclays will be
8 transferred back to Lehman. That is the expectation.

9 THE COURT: All right. I appreciate that
10 explanation.

11 One comment before you continue, Ms. Fife. I'm just
12 once again hearing the Geiger counter. And we are connected to
13 two extra courtrooms and I know that there are people
14 participating at various occasions by telephone through
15 CourtCall. And I'm hearing increased static on the line. So,
16 I'm just going to request everybody who is participating in
17 this hearing, whether by telephone or in person, who has an
18 electronic device to shut it off. And if you're on the phone,
19 since you're just listening, please mute your phone.

20 MS. FIFE: Thank you, Your Honor. I'll continue
21 going through some of the changes, if that's okay. There was a
22 provision in a deal originally which required the debtors to
23 transfer 700 million dollars in cash to Barclays. And that is
24 no longer the case. There's no cash that's being transferred
25 to Barclays.

1 In addition, there was a provision in the contract
2 where Barclays was going to purchase a company called Eagle
3 Energy Management and they are no longer going to purchase that
4 entity.

5 We clarified, because a number of creditors had some
6 concerns during the -- yesterday we had a meeting with the
7 creditors and they were asked some questions regarding
8 intercompany claims. We made it very clear in this
9 clarification that we are not transferring any intercompany
10 payables or receivables. Those remain with the particular
11 entities.

12 There was a reference in the agreement to a mortgage
13 that was on the 745 Seventh Avenue property. And as it turned
14 out, Your Honor, there is no mortgage on that property. So we
15 deleted that reference. There was a 500 million dollar
16 promissory note made by 745 in favor of an affiliate which will
17 be repaid and extinguished.

18 Those are the major changes to the transaction.
19 There were some other clarifications that we made but I don't
20 consider them material, Your Honor.

21 THE COURT: I still consider 500 million dollars
22 material, though.

23 MS. FIFE: Yes.

24 THE COURT: So, the money that's due an affiliate,
25 what affiliate is that? And as a result of the payment, how

1 the telephone who's whispering into the courtroom. As I said
2 at the outset, everybody who is listening on the phone, mute
3 your phone. Everybody who has an electronic device, find it
4 and shut it off or throw it away.

5 MR. MILLER: Your Honor, as I was saying, this
6 afternoon the Securities Investor Protection Corporation
7 initiated a proceeding under the Securities Investor Protection
8 Act in the United States District Court for the Southern
9 District of New York. Mr. James Giddens, an attorney and
10 experienced SIPC trustee, has been appointed as trustee in the
11 SIPC proceeding. LBI consented to the commencement of the SIPC
12 proceeding. And during the past few days, Mr. Giddens was
13 provided with information concerning the state of affairs at
14 LBI and the need for expedition and support of the sale
15 transaction. Mr. Giddens is a recognized SIPC trustee and a
16 man of great talent, Your Honor. He recognized the
17 extraordinary nature of what is occurring and, unusual for a
18 SIPC proceeding, SIPC and the trustee have agreed that trading
19 in customer accounts --

20 THE COURT: Sorry. Technical difficulties.

21 MR. MILLER: In that SIPC proceeding, Your Honor, the
22 trustee and SIPC have agreed that trading in customer accounts
23 may continue in the ordinary course of business rather than be
24 suspended as is usual in a SIPC proceeding. SIPC and the
25 trustee have expended extraordinary efforts in an extraordinary

1 case to protect the public customers and ensure stability and
2 preservation of customer interests. Their actions are to be
3 commended, Your Honor. And I believe, Your Honor, that the
4 SIPC proceeding has been referred, I hope, to Your Honor.

5 THE COURT: I've seen Judge Lynch's order. I have a
6 certified copy of it and the order includes a decretal
7 paragraph removing those proceedings to this court. I'm
8 satisfied that the seal is in fact genuine and I'm prepared to
9 proceed with full authority.

10 MR. MILLER: And, Your Honor, Mr. Giddens is here
11 with Mr. Kevin (sic) Caputo from SIPC and the president of
12 SIPC, Your Honor, Mr. Stephen Harbeck who's sitting in the jury
13 box.

14 THE COURT: Gentlemen, welcome.

15 MR. GIDDENS: Thank you, Your Honor.

16 MR. MILLER: Barclays, Your Honor, has extended the
17 sale to enable this extraordinary transaction and hopefully to
18 be consummated. Yesterday, as Your Honor has heard, Barclays
19 basically stepped into the shoes of the Federal Reserve in
20 connection with the Primary Dealer Credit Facility as to the
21 45.5 billion dollars Lehman borrowed last Monday and received
22 the collateral that Lehman had posted in connection therewith.

23 Because of the circumstances this week, Your Honor,
24 the operations of LBI have resulted in approximately 300,000
25 sales, which is very significant. In addition, Your Honor,

1 because of the administration proceeding in the United Kingdom
2 for LBIE and the freezing of all of the assets of LBI that were
3 in the possession of LBIE, which I believe, Your Honor, stands
4 for Lehman Brothers England, relating to repo financings, the
5 result is that we were unable -- or LBI is unable to deliver to
6 Barclays the assets that were originally intended under the
7 APA. That's one of the reasons, Your Honor, for the amendments
8 that we heard about earlier today.

9 There are many moving parts in what we are trying to
10 do, many of which are beyond the control of Lehman or Barclays
11 as market forces operate to affect the value of the transaction
12 and the assets. Enormous problems did arise in connection with
13 clearing transactions that have caused a number of
14 modifications to the transaction. The necessity of assuring
15 DTC and other clearing institutions who will not expose
16 themselves to additional liability of some kind has been
17 enormously time consuming.

18 It's because of that, Your Honor, that we have heard
19 about these changes. But if Your Honor will look at the basic
20 agreement, the amount of cash consideration will be relatively
21 the same except for the issues with respect to the value of the
22 real estate. The 250 million dollars being paid for the
23 goodwill of LBI will go to LBI. The real estate, 745 Seventh
24 Avenue, and the two data centers in New Jersey, that's with a
25 variation, Your Honor, and there's some negotiation to be done

1 don't know if he or she is in court. But I am, frankly,
2 concerned that we're all hearing -- and maybe others heard it
3 earlier but I'm hearing it only now -- that there is this
4 negative variance in the assumed value of the real estate. And
5 I find that troublesome.

6 MR. MILLER: Yes, sir. We will try to deal with
7 that, Your Honor. Now, Your Honor, in connection with going
8 forward in the transaction, I don't know what order Your Honor
9 wants to go in, whether you want to hear oral statements of
10 objections or should we move right to the evidentiary hearing?

11 THE COURT: Well, one of the things I'd like to do,
12 and it's really to verify something, I don't recall seeing an
13 objection from the official creditors' committee. And I don't
14 know, as a result of that, whether the committee supports the
15 transaction, has issues with respect to the transaction or has
16 given you notice of whatever objections they might have. So it
17 seems to me that because of the expedited nature of today's
18 proceeding, we agreed Wednesday that written objections were
19 not necessary and, particularly, not necessary in the case of
20 the committee which had just been formed. I'd like to know
21 what the status is as it relates to that important
22 constituency.

23 MR. MILLER: Mr. Despins informed me, Your Honor,
24 before the hearing -- I'm losing my voice -- that the committee
25 will not object to the transaction but does not support it. So

1 they're not affirmatively -- I think not affirmatively going to
2 stand up and say --

3 MR. DESPINS: Why don't I address that, Your Honor?

4 MR. MILLER: Sure.

5 THE COURT: I think that would be helpful.

6 MR. MILLER: Don't change your position.

7 MR. DESPINS: Good afternoon, Your Honor. Luc
8 Despins with Milbank Tweed, proposed counsel for the committee.
9 I'm here with my partners, Paul Aronson and Dennis Dunne. The
10 headline is we are not objecting, Your Honor, but although
11 we'll have some minor comments to the form of order, which we
12 don't need to detain the court order at this point. And the
13 reason we're not objecting is really based on the lack of a
14 viable alternative. And, Your Honor, we're still a little bit
15 puzzled by the statement by Mr. Miller that we're not
16 affirmatively supporting. And that's correct. We're not
17 affirmatively supporting the transaction, Your Honor, because
18 there has been insufficient time for us to really do all the
19 due diligence that we would feel should be done to take that
20 next step of saying yes, this is the best deal and we're
21 supportive actively. We've met with the debtor. They've been
22 very cooperative. I don't want to imply that they have not
23 been but we have not had time to test the assumptions and do
24 all the due diligence we would normally do. So that is, Your
25 Honor, the distinction.

1 The second message, Your Honor, which is not directed
2 at Your Honor but really at the debtor and, generally, at also
3 regulators, is that the committee, although we're not objecting
4 to this transaction, we understand we're dealing with
5 extraordinary circumstances, as Your Honor has described. The
6 committee fully expects that after this, we're going to go back
7 to what I would call --

8 THE COURT: A more conventional model?

9 MR. DESPINS: Yes. Business as usual for Chapter 11,
10 if you will, Your Honor. The committee feels very strongly and
11 wanted me to say that they recognize the extraordinary nature
12 of what's going on here but they feel their duties are to pre-
13 petition creditors, not to the market participants, not to the
14 economy at large or other participants in those markets. And I
15 think that that's very important and it's very important to the
16 committee that I convey that message, again, not to Your Honor,
17 but really to the debtor and other parties in this case. So
18 that is where we stand, Your Honor.

19 THE COURT: I appreciate that. And it lifts the fog
20 over at least that aspect of the case. And I'm grateful for
21 the comment. Has there been any --

22 MR. MILLER: Your Honor, we --

23 THE COURT: Has there been any resolution by
24 agreement of any of the other objections? Or are they all live
25 at this point --

1 dealer business. The value of the real estate being
2 transferred to Barclays pursuant to the transaction is subject
3 to negotiation with respect of the appraised values. That the
4 building on Seventh Avenue is subject to an appraisal which has
5 been provided to Barclays. And that appraisal is in the area
6 of 900 million dollars to 100 million dollars. And that the
7 appraisal was done by CB Richard Ellis. And it was prepared
8 for the other debtor in this case, LB 745 LLC and Barclays
9 Capital Inc. And it is a voluminous appraisal of the
10 properties which we will offer into evidence at the appropriate
11 time, Your Honor.

12 And that he would also testify that an appraisal of
13 the two data centers was also directed and that CB Richard
14 Ellis was also engaged to undertake that appraisal. And that
15 appraisal has established the value for the purpose of the
16 negotiations, Your Honor. And as pointed out earlier in the
17 proceeding, those values have come in at slightly less -- I
18 shouldn't say slightly, less than was originally projected.

19 So that was a very negotiated term, and the reason
20 for the transfer of these properties, Your Honor, is that they
21 are integral to the smooth transition of the businesses.

22 Barclays will also assume exposure for the employees
23 that accept offers of employment, which is estimated to have a
24 value of approximately -- an exposure of approximately two
25 billion dollars.

1 Barclays is also assuming the cure amounts relating
2 to contracts and leases that will be assumed pursuant to the
3 asset purchase agreement. And that has a potential exposure,
4 Your Honor, of 1.5 billion dollars that he would testify to.

5 Barclays is also paying the real estate transfer
6 taxes, which are estimated to be approximately thirty million
7 dollars.

8 Mr. McDade would testify that the financial community
9 has known that Lehman has been under stress for some time.
10 Certainly, going back to the time that Bear Sterns was bailed
11 out. Potential purchasers have known that Lehman has been
12 searching for a buyer since well before the Chapter 11 case
13 commenced. And that those ethics, those strategic alternatives
14 that were being pursued involved parts of Lehman as well as the
15 whole of Lehman. And that the notoriety attached to that did
16 not produce any interested parties other than the ones I
17 mentioned -- he mentioned.

18 During the meeting at the Federal Reserve Bank last
19 week, Bank of America, JPMorgan, Merrill Lynch and Barclays
20 were all present, showing interest in the broker-dealer assets.
21 It was clear to each party that if Lehman was unable to reach a
22 deal it would most likely have to commence cases under Chapter
23 11 of the Bankruptcy Code. That would not only have an adverse
24 impact upon their businesses but also upon the international
25 markets.

1 He would testify that since the commencement of the
2 Chapter 11 case, Lehman's senior management and its advisors
3 have not undertaken an intensive marketing of the business and
4 the assets to be sold. But instead focused on reaching an
5 agreement with the most eligible interested buyer for these
6 assets.

7 That notwithstanding the lack of a specific program
8 for marketing, the sale of Lehman's broker-dealer business has
9 been known worldwide. And, yet, he would say nobody has
10 expressed an interest to step into the shoes of -- excuse me,
11 step into the shoes of Barclays, Your Honor.

12 Lehman has not received any other interest since the
13 commencement of the Chapter 11 cases. If Lehman was approached
14 by another potential buyer that he would consider the offer,
15 provided that the company had sufficient liquidity to operate
16 the business without jeopardizing customer accounts. That has
17 not happened, Your Honor. So it is almost academic.

18 Mr. McDade would testify, Your Honor, that if the
19 sale with Barclays is consummated, customer accounts would
20 continue on a seamless, uninterrupted basis and trading would
21 continue on a normal basis, thereby maintaining the billions of
22 dollars in value.

23 At the same time, the jobs of thousands of employees
24 would be saved and will be entitled to substantial benefits
25 from Barclays in the form of compensation, bonuses and

1 A. The specific question has yet to be determined, given the
2 dynamic nature and speed of which we're operating. Each of the
3 individual businesses will enter into a series of very quick
4 next steps to determine how we actually transact in each of
5 those business units going forward.

6 Q. And who will determine which of those contracts go to the
7 purchaser and which of those contracts stay behind? Will that
8 be something in Barclays' discretion, or is that Lehman's
9 decision?

10 A. That will be a mutual process.

11 Q. And is it your understanding, sir, that all of the
12 contracts that are to be negotiated, in terms of whether they
13 stay or whether they go, are contracts that reside at LBI? Or
14 are any of those contracts that reside at other Lehman
15 entities?

16 A. LBI.

17 Q. And, sir, can you also please confirm if it is your
18 understanding that the purchased assets do not include
19 Neuberger Berman or any of its assets?

20 A. Yes, I affirm that.

21 Q. Okay. Sir, are you aware of whether -- do you know what a
22 closing balance sheet is?

23 A. Yes, I do.

24 Q. Okay. And do you know whether a closing balance sheet was
25 prepared in connection with this transaction?

1 A. I am not aware of that.

2 Q. Okay. Assuming that one was not, do you have any
3 understanding of why one was not?

4 A. The speed of which we're operating.

5 Q. Well, in the absence of a closing balance sheet having
6 been prepared, can you please describe for the Court how it is
7 that the debtor determined that fair value was being realized
8 for the sale of these assets?

9 A. For the assets?

10 Q. Yes.

11 A. The individual assets on the balance sheet, the trading
12 inventory was bottoms up, meaning individual line item detail
13 processed through all of our individual risk business units in
14 coordination with the normal finance professionals who are
15 incorporated into the valuation process.

16 Q. Did the debtors have any form of valuations of any of the
17 assets that are being transferred?

18 A. Sorry?

19 Q. Does Lehman have any valuations -- internal valuations of
20 any of the assets that are being transferred to Barclays?

21 A. Absolutely. There are many complex securities involved.
22 Many different models that we use to evaluate those securities.

23 Q. And so, sir, is it your testimony then that a valuation
24 was conducted within Lehman of all of the assets that are being
25 transferred to Barclays? When was that conducted?

1 A. Portfolio moved during the week, but that was conducted
2 all last evening. All through and up to the arrangement -- the
3 agreement today.

4 Q. And, sir, was it the case that at the time of the meeting
5 that took place with creditors this past Wednesday, LBI had
6 approximately --

7 MR. MILLER: Excuse me, Your Honor, Thursday.

8 MR. QURESHI: I apologize, it was Thursday.

9 THE COURT: I'll take that as an objection to the
10 question, and it's sustained.

11 Q. Am I correct, sir, in understanding that at that time
12 creditors were told that LBI had approximately 1.3 billion
13 dollars in cash?

14 A. That's correct.

15 Q. Okay. And at that time, the deal was that 700 million of
16 those funds would go to Barclays, and the remaining 600 million
17 would stay at LBI?

18 A. That's correct.

19 Q. And what is the cash balance at LBI today?

20 A. It's virtually nil.

21 Q. Where did it go?

22 A. To the CME. Liquidation of the CME trades. And to all
23 the other clearing banks involved in processing of the
24 transactions this week.

25 Q. Sir, since the time that the agreement was first entered

1 into with Barclays early in the week, are you aware of any
2 affirmative efforts of having been undertaken on behalf of
3 Lehman to shop these assets to any other potential purchasers?

4 A. The assets, specifically, the inventory assets?

5 Q. The assets being acquired by Barclays or any subset of
6 those?

7 A. No. Nor -- no.

8 MR. QURESHI: Your Honor, may I have one moment,
9 please?

10 THE COURT: Sure.

11 Q. Sir, are you familiar, generally, with the terms of the
12 DIP financing agreement?

13 A. Generally.

14 Q. Okay. Is it your understanding that if the transaction
15 with Barclays does not close, that that would constitute a
16 default under the DIP?

17 A. Thirty days to repay. It's thirty days to repay.

18 Q. So it would trigger a thirty-day repayment of it?

19 A. Yes.

20 Q. Okay.

21 MR. QURESHI: Thank you, Your Honor, that's all I
22 have.

23 THE COURT: Is there anyone else who wishes to
24 examine the witness?

25 MR. ROSNER: Your Honor, if you can see me, I'm right

1 A. I was at an afternoon session. My understanding is there
2 was more than one session.

3 Q. And these questions were asked as to the intercompany
4 payable, correct?

5 A. Uh-huh.

6 Q. And do you recall whether --

7 THE COURT: You have to answer with more than a nod
8 of the head. Thanks.

9 THE WITNESS: Sorry.

10 Q. And do you recall whether this information that I'm asking
11 now was given yesterday at the information center?

12 A. It was not given yesterday.

13 Q. Which debtor entity owes that money to LBIE?

14 A. LBI is a payable to LBIE.

15 Q. And what about Holdings?

16 A. LBIE is a payable to LB Holdings.

17 Q. And how much is that?

18 A. Eight billion.

19 Q. And do you know what that's derived from?

20 A. No.

21 Q. Did you do an audit of the -- I'm sorry. Has an audit
22 been accomplished of the securities that are to be transferred
23 to Barclays under the proposed transactions?

24 A. If you mean an audit by external valuation process?

25 Q. By identification of the securities?

1 A. Absolutely, line by line.

2 Q. I think during your proffer it was stated that you are
3 familiar with the contract. I assume that means you don't know
4 every line but you are generally familiar with the contract
5 that's before the Court today, is that a fair statement?

6 A. Yes.

7 Q. Are you aware of the closing conditions under the
8 contract?

9 A. I believe so.

10 Q. Are they all satisfied as of today, subject to the entry
11 of an order by this Court?

12 A. With respect to all those that I have knowledge of, yes.

13 Q. And I think there was a question, but I just want to be
14 clear. There is a closing condition regarding eight employees
15 signing up agreements, is that correct?

16 A. That is correct.

17 Q. And I might have missed this before, and have all of those
18 eight employees been signed up?

19 A. We expect no issues with respect to the employment
20 services needs to close.

21 Q. Okay. So as of sitting here right now, that condition has
22 not been met?

23 A. We expect no issues.

24 Q. For the record, it's a yes or no and I just want to make
25 it clear on the record?

1 A. I do not have the specific information with respect to
2 either the exact number of those participants or with respect
3 to Barclays' view as to whether that would be waived if,
4 indeed, that became an issue.

5 MR. ROSNER: Okay. I have nothing further, Your
6 Honor. Thank you.

7 THE COURT: Okay, thank you. Is there anyone else
8 that wishes to examine Mr. McDade? Come forward. Please state
9 your name and identity of the client that you're here to
10 represent.

11 MR. BYRNE: Yes, Your Honor, good afternoon. Larry
12 Byrne from Linklaters. Linklaters, Your Honor, represents the
13 administrators who have been appointed to supervise the
14 insolvency of four Lehman Brothers entities in the U.K. and in
15 Europe.

16 THE COURT: These are the Pricewaterhouse people?

17 MR. BYRNE: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. BYRNE: So we act for Pricewaterhouse who are now
20 the insolvency administrators in the U.K. for these four Lehman
21 Brothers entities who are affiliates of subsidiaries of the
22 debtors.

23 THE COURT: Okay. You may proceed with your
24 questions.

25 CROSS-EXAMINATION

1 connection with the transactions that did not happen. And then
2 we were re-retained on, I guess, Monday afternoon, after the
3 filing.

4 Q. Okay. And, sir, is it correct that you are, again,
5 generally familiar with the terms and the provisions contained
6 in the asset purchase agreement?

7 A. Yes.

8 Q. And in your proffer the preservation of nine to ten
9 thousand jobs was discussed, correct?

10 A. Yes.

11 Q. And is it your understanding that Barclays' obligation,
12 under the terms of the asset purchase agreement, is to only
13 keep those employees for ninety days?

14 A. I think, under the terms of the agreement, all nine to ten
15 thousand people will be offered a job for ninety days, and at
16 the end of that period Barclays will decide if they want to
17 offer them full-time employment or not and, if not, they will
18 be given severance according to Lehman's normal severance
19 policy.

20 Q. Okay. With the severance to be paid by whom?

21 A. Barclays.

22 Q. Okay. So the obligation to employ runs only for ninety
23 days?

24 A. I don't know that there's a commitment only for ninety
25 days. It's unimaginable to me that they can run the business

1 without people.

2 Q. Sir, are you generally familiar with the closing
3 conditions contained in the APA?

4 A. Generally.

5 Q. Okay. And, according to your understanding, as you sit
6 here today, have all of the closing conditions been satisfied?

7 A. I don't know.

8 Q. Okay. Are you aware of any specific closing conditions
9 that have not been satisfied?

10 A. I don't know.

11 Q. Okay. Are you aware, sir, of the provision in the asset
12 purchase agreement that requires contracts to be negotiated
13 with eight key employees?

14 A. Yes.

15 Q. Is it your understanding that that is a closing condition?

16 A. Yes.

17 Q. Is it your understanding that that closing condition has
18 been satisfied?

19 A. I don't know.

20 Q. Okay. Is it your understanding that that closing
21 condition has been waived by Barclays?

22 A. Not that I know of.

23 Q. Okay. Sir, is it also your understanding that one of the
24 closing conditions is that, I believe, a prior version of the
25 APA used the term "substantial majority" of so-called "critical

1 employees" agreed to go with Barclays upon the closing of the
2 transaction?

3 A. My understanding: that it's that they don't leave. I
4 don't know that there's an agreement that they go.

5 Q. That they are acquired by Barclays, in other words?

6 A. In other words, they haven't left before the closing.

7 Q. Right. And is it your understanding --

8 MR. QURESHI: Or, strike that.

9 Q. Do you know if that closing condition has been complied
10 with?

11 A. We're closing tonight or we're not closing?

12 Q. Do you have an understanding of whether the substantial
13 majority of the employees on that list have agreed to stay upon
14 the closing?

15 A. That's not the -- they don't leave. It's not that they
16 agreed to stay. And at close of business I saw people working,
17 albeit not everybody was at their desk.

18 Q. Sir, in your proffer -- through your proffer you testified
19 that Lazard has contacted a number of entities in connection
20 with attempting to find buyers for these assets. Is that
21 correct?

22 A. Can you clarify when?

23 Q. Well, that is going to be my question. Since the
24 transaction with Barclays was signed up, has any effort been
25 made by Lazard to try to find an alternative buyer for the same

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I N D E X, cont'd

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtor's motion for an order confirming status of Citibank clearing advances approved	57	1
Sale transaction approved	245	25

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
DN: cn=Lisa Bar-Leib, c=US
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